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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,622	11/21/2003	Moshe Levnat	847-072	3492
20874	7590	07/05/2006	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			TAMAI, KARL I	
			ART UNIT	PAPER NUMBER
			2834	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,622

Applicant(s)

LEVNAT, MOSHE

Examiner

Tamai I.E. Karl

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/14/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited, (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 is rejected because "a lubricant compatible with FDA oversight" is vague and indefinite. It is unclear which lubricants are considered compatible for a sealed bearing. For the purpose of advancing prosecution on the merits, any bearing lubricant which is sealed can be considered compatible for FDA oversight since the sealed lubricant will not contact the food or medicine.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

4. Claims 1, 2, and 6-13 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. Co-pending Application serial number; 10719768 (US 2005011354) indicates that the unsealed washdown motor claimed was invented by Susanta Datta.

Art Unit: 2834

5. Claims 1, 2, 9, 10, 11, and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Perl (US 3750951). Perl teaches an electric motor having a stainless steel housing 64 that admits washing fluid to be circulated through the motor after the washing operation. The motor includes a stainless steel housing 69 and an inner stainless steel can 70 positioned between the rotor and stator and exposed to the washer water. Perl unsealed motor being drained and heat dried by operation of the motor after the wash cycle (inherently drying and protecting against failure) (col. 5, line 40). Perl teaches the bearings lubricated and sealed at 54 against the entrance of liquids (col. 3, line 65).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perl (US 3750951) and Kenny (US 6652249). Perl teaches every aspect of the invention except the motor being a permanent magnet motor or a control with a resolver or encoder. Kenny teaches wet pumps have permanent magnet rotors 87 with resolver or encoder (col 10, line 15) controls to provide an integrated, self contained, pump, motor and a control unit with is inexpensive and easy to assemble. It is would have

Art Unit: 2834

been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Perl with the motor being a permanent magnet motor or a control with a resolver or encoder because Kenny teaches the wet motor can be designed inexpensively and which is easy assemble, where the resolver or controller provides control of motor to overcome load variations.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perl (US 3750951). Perl teaches every aspect of the invention except the bearings lubricated with a lubricant compatible with FDA oversight. It is would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Perl with the bearings lubricated with a lubricant compatible with FDA oversight because selection of the material based on intended use is within the ordinary skill in the art (*In re Leshin*, 125 USPQ 416), and because the residual lubricants may leak from an old oil seal and be deposited on the dishes being cleaned by the dish washer.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perl (US 3750951) and Selders (Electric Motors – Lubrication and Cleaning). Perl teaches every aspect of the invention except periodically removing the motor to be cleaned. Selders teaches disassembly of the motorized device to provide a through cleaning. It is would have been obvious to a person of ordinary skill in the art at the time of the invention to remove the motor of Perl from the apparatus prior to cleaning to clean foreign matter from the motor, as taught by Selders.

Double Patenting

10. Claims 11-13 are directed to an invention not patentably distinct from claims 10-12 of commonly assigned 10/719,768. Specifically, the current claims require an electric motor with stainless steel exposed surfaces and a stainless steel housing.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned 10/719,768, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical; but at least one examined application claim is not patentably distinct

Art Unit: 2834

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 11-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-12 of application number 10/719,768 in further view of Perl (US 3750951). Claims 11-13 of the current application of the same as claims 10-12 of the copending application (10/719,622) except the current claims require an electric motor with stainless steel exposed surfaces and a stainless steel housing. Perl teaches both a stainless steel housing 64 and a motor with a stainless steel can 70 between the rotor and the stator. It would have been obvious to make the claimed motor of copending application 10/719,768 with the stainless steel components of Perl to allow thermal dissipation from the motor to the pumped fluid as taught by Perl.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl I.E. Tamai whose telephone number is (571) 272 - 2036.

Art Unit: 2834

The examiner can be normally contacted on Monday through Friday from 8:00 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Darren Schuberg, can be reached at (571) 272 - 2044. The facsimile number for the Group is (571) 273 - 8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Karl I Tamai
PRIMARY PATENT EXAMINER
June 24, 2006


KARL I. TAMAI
PRIMARY EXAMINER